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Supreme Court, U.S.
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NO. 83-1616

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

WILLIAM FOREMAN, VINCENT PILLETERS and TERRY WARDEN,

Petitioners,

vs.

HOWARD V. COLLINS,

Respondent.

and

UNITED STATES OF AMERICA,

Intervenor.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

REPLY BY THE RESPONDENT, HOWARD V. COLLINS

ALFRED P. KREMER
Attorney for Howard V. Collins
Office and Post Office Address
One Exchange Street, Suite 900
Rochester, New York 14614
Telephone: (716) 546-6040

COUNTERSTATEMENT OF THE CASE

On February 19, 1975, Howard Collins, then eighteen years was incarcerated in the Monroe County (New York) Jail awaiting trial. On that day these petitioners, jail guards, beat him and broke his jaw.

Subsequently, Mr. Collins commenced an action pursuant to 42 USC 1983. There was no claim for any pendant state action.

Because Monroe County is in the eastern most portion of the Western District of New York, Mr. Collins' case appeared on the calendar of the late Harold J. Burke.

As of July, 1981, Judge Burke was reaching the end of his career and was having difficulties in moving his trial calendar because of the commencement of what would be his fatal illness.

Chief Judge John T. Curtin, in July, delegated Magistrate Edmond T. Maxwell to hear those cases which the litigants would consent to try in front of him.

Consequently, Magistrate Maxwell contacted the attorneys for these parties and indicated his availability to hear this case if the parties would stipulate to it.

On September 8, 1981, the attorneys for these parties entered into a formal written stipulation consenting not only to having the magistrate preside at the trial and consenting that he enter judgement but also that any appeal be heard before a United States District Judge rather than the United States Court of Appeals for the Second Circuit all in accord with 28 USC 636 C (1) (4) (appendix A-1).

From that date until approximately September 15, 1983, petitioners here neither moved to have their consent to a magistrates trial abrogated as would be their right under 28 USC 636 C (5), nor did they ever raise the question

of the constitutionality of these provisions of law allowing them to stipulate to a trial before a United States Magistrate.

These petitioners no where tell this court that in the motion to Magistrate Maxwell to set aside the verdict, in their appeal to Judge Curtin to reverse the judgement of the court below,or in their petition for leave to appeal to the United States Court of Appeals for the Second Circuit, on their direct appeal that no mention was ever made of these important constitutional questions which these petitioners now seek to have this Court decide.

The Instant claims were first made after the United States Court of Appeals for the Ninth Circuit handed down its panel decision, subsequently reversed in Pacemaker Diagnostic Clinic of America, Inc., vs. Instromedics, Inc., 712 F. 2d 1305 (C.A. 9, 1983)..

Petitioners argued, on the collateral attack, for the first time that their consent to a magistrates trial was actually obtained through the coercion of the magistrate. That claim was disposed of as being "an uncalled-for leap of imagination." (appendix to the petition A-16) by the United States Court of Appeals for the Second Circuit.

No where do petitioners show that they ever raised these claims at any time prior to their collateral attack.

POINT I

THE CASE IS IN A POOR PROCEDURAL POSTURE.

Petitioners' arguements for a grant of a writ of certiorari are really bottomed upon a claim that a jury never should have awarded a verdict to plaintiff in any amount let alone $63,000, that of course was resolved against them.

No where in any arguement to this or any other court do these petitioners ever attempt to demonstrate how a trial by an Article III judge would have caused the jury to no cause Mr. Collins.

Petitioners argue to this court that magistrates are not under control of the District Court (pet. 8); the Magistrate's Act changes the balance of power of Congress and the Judiciary as these magistrates are not subject to Congressional approval nor Presidential appointment (pet. 9).

They argue that ultimate decision making authority does not rest with the District Court (pet. 10, 14, 15, 16); they tell this court that magistrates do not have life tenure and are subject to the political pressures of the district judge (pet. 17).

Even if all of that were true, these petitioners no where show how any one of those problems affected the outcome of their jury trial. Whatever claims of error they made were rejected on the appeal to the United States District Judge.

If there was an error here, arguendo, petitioners never showed how it affected them. In any event, it appears to be waived.

Also, petitioners' claims come at a time when Mr. Collins can do nothing about them. If these petitioners had second thoughts about the validity of a magistrates trial which they consented to, they would have been within their rights to move to abrogate that consent.

Indeed, if they had raised these same arguements in support of that arguement, Mr. Collins may well have joined in the motion to set aside the consent and wait for a trial by an Article III judge to avoid this contention.

Further, in Northern Pipeline Co., vs. Marathon Pipeline Co., 458 US 50, 73 L.Ed. 2d 598, 102 S.Ct. 2858 (1982), Marathon,did not wish to be sued in a Bankruptcy Court, not having consented to do so.

Its right not to be sued in Bankruptcy Court was ultimately vindicated by this court.

There, there was a real controversy for this Court.

Here, there is no controversy in the technical sense of that word. Obviously, there is a dispute about whether or not the Magistrate's Act is constitutional or not.

However, the basic controversy between these parties has already been resolved in favor of Mr. Collins.

The vehicle bringing the case through this court system now is the claim that the judgement, valid by all of the juridical rules when it was entered and became final is now invalid because the Magistrate's Act is invalid and has been invalid since December 14, 1981, the date that judgement was entered against these petitioners.

If the Court is going to declare the Magistrate's Act unconstitutional, it must do so retroactive to that date or these petitioners are not aided in any way whatsoever and there is no case in controversy.

Obviously, these petitioners would not want the Magistrate's Act held unconstitutional and then have this Court decide to make the unconstitutionality prospective. Yet, no where do these petitioners even remotely hint at the problems which would be created if every single magistrate's trial since that date were held to be illegal.

. Presumably, there would be incarcerated defendants who might well have false arrest suits and civil litigants who would certainly want to try and recoup monies which had been awarded as the result of illegal judgements.

Petitioners' collateral attack was made pursuant to Rule 60 of the Federal Rules of Civil Procedure. Petitioners succeeded below in avoiding dismissal of their attack by arguing that they had proceeded "within a reasonable time," in bringing their attack on the constitutionality of the Magistrate's Act.

Petitioners here, so long as they can obtain stays, are rewarded for their dilatory tactics.

By granting the Writ and scheduling this case for argument, this Court permits litigants such as these petitioners to expend scarce judicial resources for ends which do not benefit the judicial system.

POINT II

THE MAGISTRATE'S ACT IS CONSTITUTIONAL.

As petitioners note, three United States Circuit Courts have already upheld the validity of the Magistrate's Act.

In urging the unconstitutionality of that act, petitioners here fail to understand what it is that this Court decided in Northern Pipeline, Co., supra.

The problem which this Court decided there was:

> . . . whether the assignment by Congress to Bankruptcy judges of the jurisdiction granted in 28 USC §1471 . . . violates Article III of the Constitution.

The plurality opinion there began by describing the powers which Congress granted to Bankruptcy judges.

The plurality noted that Congress had created a "much broader,"(458 US 54) jurisdiction in Bankruptcy Courts than was previously exercised under the former referee system.

It was undisputed that bankruptcy judges were not given the same protections as Article III judges.

The plurality noted that Bankruptcy Courts were not legislative courts (458 US 63).

The plurality concluded that bankruptcy judges were not adjuncts of the District Court because on the one hand many of the rights which they would be called upon to adjudicat were not created by Congress and further that the final decision making authority of an adjunct remained with the district judge.

Petitioners here argue that magistrates are not Article III judges and that the same result ought to occur here as in Northern Pipeline, Co., supra.

The petitioners here fail to understand that no new special powers were taken from Article III courts and given to magistrates.

Here, the magistrate is given power to preside only at those trials which are first consented to and at the same time assigned to him by the district judge. Without the assignment by the district judge and without the consent there can be no exercise of Article III power; see 28 USC §636 (C) (1) (2).

This of course is a far cry from the broad sweeping powers granted to bankruptcy judges.

Moreover, the magistrate here was not deciding any state law issue or any common law cause of action but a Civil Rights cause of action brought pursuant to a substantive right created by Congress.

These petitioners seek to turn US vs. Raddatz, 447 US 667 65 L.Ed. 2d 424, 100 S.Ct. 2406 (1980), on its head to argue that the case is authority for the proposition that a magistrate can only exercise fact finding power so long as the final determination to make a de novo determination remains with the District Court.

What the plurality decided that Raddatz, supra, held was that the exercise of judicial power by magistrates made them adjuncts of the district court.

The expression of approval of the delegation of power to the magistrates there was never intended to act as a cap prohibiting magistrates, under a different section of law, from presiding at trials and entering judgments, on consent.

That is, this Court in Raddatz, was not asked to decide how much Article III power could be granted to a non-Article III judge but only whether the delegation of

authority there was constitutional.

The remaining arguements of these petitioners seem to deal with the fact that Article III judges have great power over magistrates and that neither the President nor the Congress have the power to appoint them.

Preliminarily, this arguement is more appropriately made by respondent in support of his contention that this proves that not only is the magistrate insulated from the Congress and the President, but also is under the control of an Article III judge.

As to the claimed lack of independence of the magistrates within the Article III frame work, this particular matter of constitutional concern has long been resolved.

In 1789, the House of Representatives, acting as a committee of the whole,took up a bill to establish the State Department. The House of Representatives debated the question as to whether the President would have the power to remove the Secretary of State or whether the Secretary of State could be removed only by impeachment by the Senate.

It was the contention of James Madison that removal of a Secretary of State should be left to the President and should not be a matter for impeachment by the Senate. He concluded:

> That the executive power being generally vested in the President and the executive function of removal not expressly taken away, it remained with the President. (Papers of James Madison, Vol. 11 University of Virginia Press, pg. 271 (letter to Thomas Jefferson June 30, 1789)).

Obviously, what Madison had in mind was that the executive branch would be responsible for the lesser officials appointed to it. It would seem that that argument would certainly be applicable in the instant situation.

Indeed, this Court in Northern Pipeline, Supra., held that the threat to the magistrates referred only to the danger from an "incursion by other branches," of government (458 US 78, f.n. 30).

The U.S. Court of Appeals for the Second Circuit noted that the parties consent, here, to a magistrate's trial. provided the necessary condition for the exercise of jurisdiction (A-24, A-25).

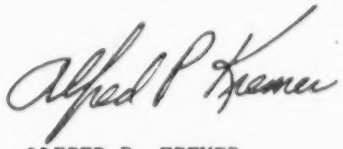
Literally taken, the thrust of petitioners' argument is that there can never be any use of Article III power by any non-Article III judge. If this Court is going to adopt that argument, then every single consensual arbitration which has been reduced to judgement can be overturned at some later point.

Although one can waive the right to, among other, Fourth and Fifth Amendment guarantees, these petitioners argue that a magistrate's trial can never be held even if the court has jurisdiction over the subject matter of the litigation and the parties.

Petitioners cite no authority for this proposition and there is none. The exercise of Bankruptcy jurisdiction described in Northern Pipeline, Supra., was not consensual. This was an additional problem in that case, not present here.

POINT IV

The petition for a writ of certiorari should be dismissed, or alternatively, it should be granted and the decision of the U.S. Court of Appeals of Second Circuit below affirmed without further briefing or argument.



ALFRED P. KREMER
Attorney for Howard V. Collins

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Howard V. Collins

Plaintiff

-vs-

Vincent Pilleters
Terry Ward

Defendants

Docket No. CIV-75-139R(C)

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE

In accordance with the provisions of 28 U.S.C. §636(c), the parties to the above-captioned civil matter hereby waive their right to proceed before a judge of the United States district court and consent to have a United States magistrate conduct any and all further proceedings in the case (including the trial) and order the entry of judgment.

S/ [signature] 9/8/81

S/ [signature] 9/9/81

Any appeal shall be taken to the United States court of appeals for this judicial circuit, in accordance with 28 U.S.C. §636(c)(3), unless all parties further consent, by signing below, to take any appeal to a judge of the district court, in accordance with 28 U.S.C. §636(c)(4).

S/ [signature] 9/8/81

S/ [signature] 9/9/81

Note: Return this form to the Clerk of Court only if it has been executed by all parties to the case.

ORDER OF REFERENCE

IT IS HEREBY ORDERED that the above-captioned matter be referred to United States Magistrate Edmund F. Maxwell for the conduct of all further proceedings and the entry of a judgment in accordance with 28 U.S.C. §636(c) and the foregoing consent of the parties.

9/21/81
Date

S/ John T. Curtin
UNITED STATES DISTRICT JUDGE

EXHIBIT A

BEST AVAILABLE COPY